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| WALTER ROSALES, JANE DUMAS, JOE COMACHO, and KAREN TOGGERY, Appellants | : | Order Dismissing Appeal |
| v. | : | Docket No. IBIA 98-9-A |
| SACRAMENTO AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee | : | July 29, 1999 |

Appellants Walter Rosales, Jane Dumas, Joe Comacho, and Karen Toggery 1/ challenge a Secretarial election held on August 31, 1996, to amend the tribal constitution of the Jamul Indian Village (Village). Appellants represent one of two competing groups within the Village. The other group is represented in this appeal by the individuals who were recognized as the tribal government by the Bureau of Indian Affairs (BIA) after tribal elections held in 1995 and 1997. For the reasons discussed below, the Board of Indian Appeals (Board) dismisses this appeal.

This appeal is a continuation of a controversy which the Board addressed in Rosales v. Sacramento Area Director, 32 IBIA 158 (1998) (Rosales I). Additional background information can be found in Rosales I.

In general, the controversy stems from the fact that the Village was originally organized under the Indian Reorganization Act (IRA), 25 U.S.C. § 479, as a community of half-bloods.

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1/ Val Mesa and Sarah Aldamas are listed as additional appellants in filings from the Appellants. In a declaration dated Mar. 5, 1999, Mesa stated that he had been advised that he was listed as an appellant in this appeal, but that he did "not wish [his] name to be used in any such appeals, or suits, and [he had] not knowingly authorized any attorney to represent [him] in any such actions." In a declaration dated Sept. 22, 1998, Aldamas stated that she supported the currently recognized tribal government, chaired by Kenneth Meza. A May 21, 1999, filing from the currently recognized tribal government states that Aldamas is now deceased.

Although Appellants object to these declarations, Mesa and Aldamas are no longer recognized as appellants in this appeal.

In 1981, BIA found that 23 individuals were eligible to organize the Village. 2/ However, as the Board discussed in Rosales I, it is questionable whether BIA actually verified that each of these 23 individuals had at least 1/2 degree Indian blood. See 32 IBIA at 162.

Nevertheless, these 23 individuals were permitted to hold an IRA election, and they adopted a constitution. BIA approved the Village's constitution, acquired land in trust for the Village, and recognized the Village as an entity eligible to receive services from BIA. Id. at 162-63. In keeping with its recognition as a community of half-bloods, the Village's constitution required 1/2 degree Indian blood for membership. BIA treated the Village as a "created" tribe, informing the Village that it had fewer rights and authorities than "historic" tribes.

In 1992, members of the Village determined that the Village's constitutional blood quantum requirement needed to be lowered or the Village would cease to exist as a tribe when all of the original 23 members died. A Secretarial election was requested to amend the Village's constitution by reducing the blood quantum requirement from 1/2 to 1/4 degree. As is discussed more thoroughly in Rosales I, 32 IBIA at 163-66, BIA responded that the Village was required to maintain a 1/2 degree blood quantum requirement.

On November 4, 1995, the then-recognized tribal government again requested a Secreretarial election to reduce the blood quantum requirement. This time, a Secretarial election was authorized. 3/ Only original members of the Village were eligible to vote in the Secretarial election. At that time, 15 of the original 23 members of the Village were still living. Eight of the 15 surviving original members registered to vote. Seven of the 8 registered voters actually voted in the August 31, 1996, Secretarial election. The proposed amendment was approved by a vote of 7 to 0. The amendment was subsequently approved by the Deputy Commissioner of Indian Affairs on October 15, 1996.

In this appeal, Appellants challenge the holding of a Secretarial election.

Appellants contend that they objected to the Secretarial election in an August 28, 1996, letter, and that when they did not receive a response to their objections, they attempted to force

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2/ These 23 individuals are listed in Rosales I, 32 IBIA at 160 n.3.

3/ This change in position may have resulted from the enactment of two pieces of legislation in 1994: (1) the Act of May 31, 1994, Pub. L. No. 103-263, sec. 5(b), 108 Stat. 709, which added new subsections (f) and (g) to 25 U.S.C. § 476; and (2) the Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, sec. 103, 108 Stat. 4791, 25 U.S.C. § 479a note. In Rosales I, the Board held that these acts undermined BIA's reasoning as to why the Village was required to maintain a 1/2 degree blood quantum requirement. See 32 IBIA at 166.

a response from either or both the Superintendent, Southern California Agency, BIA (Superintendent), or the Sacramento Area Director, BIA (Area Director), through invoking the procedures in 25 C.F.R. § 2.8. Section 2.8 provides procedures for bringing the failure to a BIA official to act or to make a decision to the attention of the next official in the administrative review process. Appellants contend that BIA erred by holding the Secretarial election while their objections were pending.

The August 28, 1996, letter states:

> Let there be no mistake, the Jamul Indian Village has not requested a Secretarial election on the adoption of amendments to its Constitution, nor are you in receipt of a petition signed by 30% of the tribe's adult members requesting such an election, as required by 25 C.F.R. 81.5.
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> My clients are further informed that [the Superintendent] has improperly acquiesced in this illegal request [for a Secretarial election], and has been further assisting [a group of individuals] in violating the Tribal Court's December 1, 1995 Judgment. [4/] My clients have been further informed that non-eligible individuals have been permitted to purportedly "register" to vote in this proposed illegal election on August 31, 1996.
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> This will serve to inform you that my clients object to these acts by [a group of individuals] and any acts by [the Superintendent] in furtherance of the violation of the Tribal Court judgment or in breach of his fiduciary obligations under federal law toward my clients. If [the Superintendent] or any agent of the U.S. persists in violating the Tribal Court judgment and assists in any way in holding the purported August 31, 1996 un-authorized and un-requested "election", my clients will have no alternative but to pursue their rights against such action for further violation of the Tribal Court judgment and federal law.

The Board has carefully read the August 28, 1996, letter. Although the letter set out several objections to the holding of the Secretarial election, the operative part of the letter is the last sentence quoted above. The letter notified BIA that, if the election was held, Appellants would take action.

The Board concludes that the only decision BIA was required to make in response to the August 28, 1996, letter was whether it would hold the Secretarial election despite the objections raised in the letter. Although BIA could have responded to the letter in writing, and

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4/ The Board discussed this tribal court in Rosales I. 32 IBIA at 161 n.5 and 167 n.8.

might have been well-advised to do so, the Board concludes that the holding of the election was in itself an adequate response.

Appellants also argue that the August 28, 1996, letter constitutes a timely appeal from the results of the Secretarial election. 25 C.F.R. § 81.22 provides:

> Any qualified voter, within three days following the posting of the results of an election, may challenge the election results by filing with the Secretary through the officer in charge the grounds for the challenge, *together with substantiating evidence*. If in the opinion of the Secretary, the objections are valid and warrant a recount or new election, the Secretary shall order a recount or a new election. The results of the recount or new election shall be final.

Appellants contend that the August 28, 1996, letter timely challenged the results of the Secretarial election because the letter was filed three days before the election.

Putting aside the practical question of how one can challenge the results of an election that has not yet been held, 25 C.F.R. § 81.22 requires that a challenge to a Secretarial election be filed by a "qualified voter." It is not clear who authorized the August 28, 1996, letter. The letter was written by counsel, and identifies the principals merely as "my clients." The Board has found nothing in the materials before it which identifies the individuals who purportedly were represented by counsel in this letter. Under these circumstances, the Board could hold that Appellants have failed to show that the letter was authorized by a "qualified voter," because they have failed to show anyone who authorized the letter. However, for the purposes of this discussion only, the Board will assume that the letter was authorized by some or all of the individuals who were listed as appellants when this appeal was filed with the Board.

It is undisputed that, when the Secretarial election was held, 15 of the original 23 members of the Village were still living. According to the administrative record, only original members were allowed to register to vote; and 8 of the 15 surviving original members registered, and were therefore "qualified voters." The 8 "qualified voters" were Carlene Chamberlain, Mary Cuero, Isabel Curo, Lupe Curo, Gerald Mesa, Leslie Mesa, Kenneth Meza, and Edward Rosales. None of these individuals is an appellant in this appeal.

Appellants argue, however, that all of the original members of the Village who were still living at the time of the Secretarial election were "qualified voters." They contend that these individuals were registered to vote at the time of the initial IRA election and that there is no requirement in the Village's constitution for "re-registration" for a subsequent Secretarial election.

None of the four individuals still recognized as Appellants in this appeal are original members of the Village. Therefore, none of the present Appellants would be "qualified voters"

even if the Board accepted this argument. However, Mesa and Aldamas were original members, and were listed as appellants in this appeal when the appeal was filed with the Board. Mesa and Aldamas did not register to vote in the Secretarial election, but they would nevertheless be "qualified voters" if Appellants' argument were accepted.

As noted by the Deputy Commissioner of Indian Affairs, "Secretarial elections are federal elections governed by 25 C.F.R. Part 81. Cheyenne River Sioux Tribe v. Andrus, 566 F.2d 1085 (8th Cir. 1977), cert. denied, 439 U.S. 820 (1978); 25 C.F.R. § 81.1(s)." Deputy Commissioner's Aug. 13, 1998, Response at 1. Registration of voters for a Secretarial election to amend a tribal constitution is required by 25 C.F.R. § 81.6(d), which provides:

> For a reorganized tribe to amend its constitution and bylaws, only members who have been duly registered shall be entitled to vote; provided, that registration is open to the same class of voters that was entitled to vote in the Secretarial election that effected its reorganization, unless the amendment article of the existing constitution provides otherwise.

There are no exceptions to the registration requirement in 25 C.F.R. § 81.6(d).

The Board therefore rejects Appellants' argument that all of the surviving original members of the Village were "qualified voters" in the 1996 Secretarial election. It concludes that Appellants have failed to show that the August 28, 1996, letter was authorized by a "qualified voter." Therefore that letter cannot serve as a challenge to the results of the Secretarial election under 25 C.F.R. § 81.22.

In summary, the Board concludes that the August 28, 1996, letter did not require a response from BIA beyond a decision as to whether or not to hold the Secretarial election, and that there was no valid challenge to the Secretarial election under 25 C.F.R. § 81.22.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal concerning the August 31, 1996, Secretarial election held to amend the constitution of the Jamul Indian Village is dismissed.

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Kathryn A. Lynn
Chief Administrative Judge

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Anita Vogt
Administrative Judge